

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ALTON D. BROWN,)	
Plaintiff,)	
)	
vs.)	Civil Action No. 04-1906
)	
JEFFREY A. BEARD, et al.,)	
Defendants.)	

MEMORANDUM ORDER

On December 17, 2004, this case was referred to United States Magistrate Judge Robert C. Mitchell for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636(b)(1)(A) and (B), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

On March 1, 2006, the magistrate judge filed a Report and Recommendation (Docket No. 123), recommending that the motion for summary judgment filed by defendants Herbik and Meyer (Docket No. 106) be granted. He further recommended that the complaint be dismissed as to defendants Geragi, Lapina, Prison Health Services and Swierczewski pursuant to Federal Rule of Civil Procedure Rule 4(m).

Service of the Report and Recommendation was made on the parties, and the plaintiff filed objections (Docket No. 125) on March 8, 2006.

In his objections, plaintiff contends, inter alia, that the Report and Recommendation erroneously recommended dismissing the complaint as to defendants Geragi, Lapina, Prison Health Services and Swierczewski pursuant to Rule 4(m) because on January 24, 2006, a notice of appearance was made on behalf of these four defendants (Docket No. 112) and on February 10, 2006, an answer to the second amended complaint was filed on behalf of these four

defendants (Docket No 121). In this respect, plaintiff's objections are sustained and the Court does not adopt the portion of the Report and Recommendation recommending dismissal as to defendants Geragi, Lapina, Prison Health Services and Swierczewski.

AND NOW, this 30TH day of March, 2006,

IT IS ORDERED that the motion for summary judgment submitted by defendants Herbig and Meyer (Docket No. 106) is granted.

Magistrate Judge Mitchell's Report and Recommendation dated March 1, 2006 (Docket No. 123) is adopted as the opinion of the Court, as modified by the instant Memorandum Order.

A handwritten signature in black ink, appearing to read "G. L. Lancaster", is written over a horizontal line.

Gary L. Lancaster
United States District Judge

cc: Alton D. Brown
DL-4686
SCI Graterford
Box 244
Graterford, PA 19426-0244